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| 09/981,184      | 10/18/2001  | Jean-Louis H. Gucret | 08048.0019-00       | 5423             |

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05/22/2003

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EXAMINER

LE, HUYEN D

ART UNIT

PAPER NUMBER

3751

DATE MAILED: 05/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/981,184

Applicant(s)

GUERET, JEAN-LOUIS H.

Examiner

Huyen Le

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 March 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-159 is/are pending in the application.
- 4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 16, 17, 19, 23, 24, 27-34, 38, 52, 53, 93-104, 109, 110, 112, 116 and 120-130 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4 & 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Continuation of Disposition of Claims: Claims withdrawn from consideration are 11-15,18,20-22,25,26,36,37,39-51,54-92,105-108,113-115,118,119,131 and 131-159.

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## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election of Species I, Figures 1-3 and 4 in Paper No. 8 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Examiner disagrees that claims 36, 37, 39, 51, 60-92, 102, 131, 133-142 read on Species I as submitted by the applicant. These claims read on other non-elected species. Therefore, claims 36, 37, 39, 51, 60-92, 102, 131, 133-142 are withdrawn from consideration as being drawn to non-elected species. Furthermore, claims are 11-15, 18, 20-22, 25, 26, 40-50, 54-59, 105-108, 111, 113-115, 118, 119, 132 and 143-159 are withdrawn from consideration as being drawn to non-elected species.

### *Claim Rejections - 35 USC § 112*

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claim 93 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear as to what the applicant means by "one application element is one of secured to the second portion and separated from the first portion and the second portion."

### *Claim Rejections - 35 USC § 102*

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-4, 6-10, 16, 17, 19, 23, 24, 30-35, 38, 52, 53, 93-101, 103, 104, 109, 110, 112, 116, 117, 123-125, 127, 129 and 130 are rejected under 35 U.S.C. 102(b) as being anticipated by the French reference (1.461.630).

The French reference discloses a device for applying a product comprising a receptacle 5 ; a removable unit 1 being configured to be removably positioned on the receptacle 5; an application element 7 configured to be housed within the removable unit 1, wherein the application element 7 comprises a surface configured to apply the product, the surface facing the receptacle 5 when the removable unit 1 is positioned on the receptacle during loading of the application element 7 with the product.

Regarding claim 4, the removable unit 1 comprises a first portion 1 and a second portion 6 that are removably engageable with one another.

Regarding claim 7, the second portion comprises a sealing member 6b.

Regarding claim 8, the sealing member 6b is chosen from a sealing skirt configured to press in a substantially leakproof manner against the first portion 1.

Regarding claim 9, the application element 7 is secured to the second portion 6.

Regarding claim 10, the portion to which the application element 7 is secured is configured as a handle member 6d.

Regarding claim 16, the removable unit comprises an endpiece 3 configured to cooperate with a portion 4 of the receptacle 5.

Regarding claim 17, the endpiece is configured to cooperate with a neck portion 4 associated with the receptacle 5.

Regarding claim 19, the receptacle 5 defines an orifice for flowing product into the removable unit 1 when the removable unit 1 is positioned on the receptacle, and the wherein the

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device further comprises a sealing member 3 configured to establish a substantially leakproof connection between the removable unit 1 and the orifice.

Regarding claim 23, removable unit 1 comprises a wall 2 defining an orifice configured to flow product therethrough.

Regarding claim 34, the device comprises a neck 4 constituting a housing, the housing being configured to receive the part 3 of the removable unit 1.

Regarding claim 35, the housing comprising a wall (having thread) for guiding movement of the removable 1 while it is placed in position on the receptacle 5.

7. Claims 1-8, 16, 17, 23, 24, 30, 32-35, 38, 52, 53, 93-99, 109, 110, 116, 117, 123-127, 129 and 130 are rejected under 35 U.S.C. 102(b) as being anticipated by Dempsey (U.S. 1,534,259).

The Dempsey reference discloses a device for applying a product comprising a receptacle 1; a removable unit 3 being configured to be removably positioned on the receptacle 1; an application element 8 configured to be housed within the removable unit 3, wherein the application element 8 comprises a surface configured to apply the product, the surface facing the receptacle 1 when the removable unit 3 is positioned on the receptacle 1 during loading of the application element 8 with the product.

Regarding claim 4, the removable unit 3 comprises a first portion 3 and a second portion 10 that are removably engageable with one another.

Regarding claim 5, the first portion 3 and the second portion 10 are removably engageable by screw fastening.

Regarding claims 7 and 8, the second portion 10 includes a skirt constituting a sealing member.

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Regarding claim 16, the removable unit 3 comprises a skirt constituting "an endpiece" configured to cooperate with a portion of the receptacle.

Regarding claim 17, the endpiece is configured to cooperate with a neck portion 2 associated with the receptacle.

Regarding claim 23, removable unit 1 comprises a wall 2 defining an orifice 5 configured to flow product therethrough.

Regarding claim 32, the application element 8 is made of a material chosen from a felt.

Regarding claim 34, the device comprises a housing 2 configured to receive at least part of the removable unit 3.

Regarding claim 35, the housing 2 comprises a wall (having thread) for guiding movement of the removable unit while it is placed in position on the receptacle.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 27-29 and 120-122 are rejected under 35 U.S.C. 103(a) as being unpatentable over the French reference (1.461.630).

Although the French reference does not specifically show that the device for applying a product is made of a non-compressible material such as a sintered polyethylene, PVC, EVA, polyamide and brass, it would have been obvious to one of ordinary skill in the art at the time the invention was made to select such a known material, since selecting a known material on the basis of its suitability for the intended use is a mere matter of obvious design choice. In re Leshin, 125 USPQ 416.

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10. Claim 27-29 and 120-122 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Dempsey (U.S. 1,534,259).

Although the French reference does not specifically show that the device for applying a product is made of a non-compressible material such as a sintered polyethylene, PVC, EVA, polyamide and brass, it would have been obvious to one of ordinary skill in the art at the time the invention was made to select such a known material, since selecting a known material on the basis of its suitability for the intended use is a mere matter of obvious design choice. In re Leshin, 125 USPQ 416.

### ***Conclusion***


11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Brown, Munroe, Sierad et al, Keskitalo, Chambers, Persi and Sgro references show application devices having removable units removably connected to receptacles.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 703-306-5504. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 703-308-2580. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7766 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0861.

HL  
May 16, 2003

  
5-19-03  
GREGORY L. HUSON  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700